

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16892 of 2006

Dated:25-08-2006

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Between:

Jadhav Mohan Singh

Petitioner

And

The Election Tribunal Cum Agency Divisional Officer/Revenue
Divisional Officer,Utnoor, Adilabad District and others.

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16892 of 2006

ORDER:

1. Heard Sri Sridhar Reddy representing Sri Raghuveer Reddy, the counsel for the petitioner and the learned A.G.P. for Panchayat Raj representing Respondent No.1 and Sri Prabhakar Rao representing Respondent No.2.

2. It is stated that the petitioner pursuant to the election notification issued for conduct of election to the post of Mandal Parishad Territorial Constituency of Hasnapur, Utnoor Mandal, Adilabad District, had contested the election to the post of member of Hasnapur Mandal Parishad Territorial Constituency and the elections to the said post were conducted on 28.6.2006 and the counting was done on 4.7.2006 . It is also stated that the petitioner had contested the election on behalf of Telangana Rastra Samithi while the third respondent herein had contested on behalf of Telugu Desam party and the fourth respondent had contested the election on behalf of Bharatiya Janata Party. It is stated that the second respondent without counting the votes properly, had declared the third respondent as elected and the petitioner had disputed the counting at the time of counting of votes itself. It is stated that the symbols were allotted basing on parties and as the counting was not done properly, the 2nd respondent had shown that the petitioner had secured 902 votes while the third respondent was shown to have secured 910 votes and the fourth respondent 38 votes. 63 votes were shown as invalid. It is also stated that the second respondent committed several irregularities. The other factual details need not be gone into since the same may not be necessary for the purpose of disposal of the present

writ petition. It is also stated that Utnoor Mandal is in Agency Area and Hasnapur and other Mandal Parishad Territorial Constituencies of Utnoor fall under the agency area. As such, an election petition was presented to the first respondent under the rules framed for constitution of Election Tribunals. These rules are known as A.P.Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereinafter referred to in short 'the Rules') and they were issued in G.O.Ms.No.111 dated 3.3.1995 in exercise of powers conferred by Section 233 and Section 268 (1) of A.P. Panchayat Raj Act, 1994. For the purpose of convenience, Rule 2 (1) of the rules referred to supra may be glanced at, which reads as hereunder:

“2 (i).. No election held under the Act, whether of a member, Sarpanch or Upa Sarpanch of Gram Panchayat, President and Vice President of Mandal Parishad and Member of Mandal Parishad Territorial Constitutively and Chairperson of Zilla Parishad and Member of Zilla Parishad Territorial Constituency thereof shall be called in question except by an election petition in sub rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates against all or any such candidates.

(2) The Election Tribunal shall be,

i) except in cases following under clause

- a) The District Munsiff, if there is more than one District Munsiff, the Principal District Munsiff having territorial jurisdiction over the place in which the office of Gram Panchayat is located, in respect of election of members, Sarpanches and Upa Sarpanches of Gram Panchayats.
- b) The Subordinate Judge or if there is more than one Subordinate Judge at the headquarters having territorial jurisdiction over the place in which the office of Mandal Parishad or Zilla Parishad as the case may be, is located, in respect of the election disputes and matters

pertaining to the election of President, Vice President and members of Mandal Parishad Territorial Constituencies and Chairperson, Vice Chairperson and Members of Zilla Parishad Territorial Constituencies.

EXPLANATION: For purpose of these rules, the expression “Subordinate Judge” and “District Munsiff” shall in relation to the Scheduled Areas mean the Agency Divisional Officer.”

3. It is stated that since the petitioner contested for the post of Mandal Parishad Territorial Constituency, as per rules, Subordinate Judge is the authority to decide Election Petition. But however, since the area of Utnoor Mandal falls in Agency Area, the expressions “Subordinate Judge” and “District Munsiff” in relation to a scheduled area mean Agency Divisional Officer. It is also stated that in the instant case, the first respondent –Revenue Divisional Officer, Utnoor is the Agency Divisional Officer of Utnoor. As such, the petitioner presented the election petition by filing O.P. before the first respondent on 10-7-2006 through his counsel and the same had been received by the office of the first respondent on 10.7.2006, but surprisingly the office of the first respondent had issued proceedings dated 31.7.2006 in Rc. No. H/470/2006 stating that the first respondent has no jurisdiction to dispose of the case as per law. The said memo reads as hereunder:

“ Rc.No.H/470/2006

Office of the Revenue Divisional
Officer, Utnoor,dated 31-07-2006.

MEMO

Sub:- Elections-IIIrd Elections to MPTCs & ZPTCs-2006-
Recounting at Voter-MPTC Hasnapoor-Regarding.

Ref:- A/o.Sri Jadhav Mohan Singh S/o. Jorsingh R/o
Hasnapoor.

Sri Jadhav Mohan Singh S/o. Jor Singh, R/o. Hasnapoor is hereby informed that, the under signed have no jurisdiction to dispose of your case as per the law.

Therefore, you are hereby advised to seek redressed of your grievance in Hon'ble High Court of A.P.,Hyderabad.

Dy.Dist. Election Authority &
Revenue Divisional Officer,
Utnoor.

To
Sri Jadhav Mohan Singh,
S/o.Jor Ssingh, R/o.Hasnapur.”

4. It is stated that the impugned memo dated 31.7.2006 is wholly without jurisdiction and contrary to Rule 2 (1) of the Rules referred to supra. It is also stated that the first respondent is empowered under the Act to decide the election disputes in agency areas, as he is the Agency Divisional Officer and all the election petitions for elections in respect of the posts of Sarpanches , Upa Sarpanches of the Gram Panchayats and also Mandal Parishad Territorial Constituencies have to be presented before the first respondent only. Several other factual details also had been narrated in Para 5 of the affidavit filed in support of the writ petition.

5. On a careful reading of Rule 2 (1) of the Rules referred to supra, this court is satisfied that the first respondent cannot issue the impugned memo inasmuch as by virtue of Rule 2 (1) of the Rules, the first respondent alone is the competent authority to entertain the election O.P. and decide the same in accordance with law. It is needless to say that if any other queries or objections are raised in relation to the election O.P. already presented, the petitioner is at liberty to comply with such queries which may be raised and the first respondent to entertain the election O.P. already presented and dispose of the same in accordance with law.

6. With the above direction, the writ petition is disposed of. No order as to costs.

25-08-2006

Stp